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*Counsel for Plaintiff*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

GERALD ROSS, Derivatively and on Behalf of  
ASSERTIO THERAPEUTICS, INC.,

Plaintiff,

vs.

JAMES P. FOGARTY, KAREN A. DAWES,  
ARTHUR J. HIGGINS, LOUIS J. LAVIGNE, JR.,  
WILLIAM T. MCKEE, GAVIN T. MOLINELLI,  
ROBERT G. SAVAGE, PETER D. STAPLE,  
JAMES L. TYREE, SAMUEL R. SAKS, M.D.,  
JAMES A. SCHOENECK, DAVID B. ZENOFF,  
SRINIVAS G. RAO, M.D., PH.D. and R. SCOTT  
SHIVELY,

Defendants, and

ASSERTIO THERAPEUTICS, INC., F/K/A  
DEPOMED, INC.,

Nominal Defendant.

Case No. 17-cv-06592-JST

**JOINT STIPULATION AND  
~~PROPOSED~~ ORDER REGARDING  
DISMISSAL**

Hearing Date: N/A  
Courtroom 6, 2<sup>nd</sup> Floor

Hon. Jon S. Tigar

1 Plaintiff Gerald Ross (“Plaintiff”), individual defendants James P. Fogarty, Karen A. Dawes,  
 2 Arthur J. Higgins, Louis J. Lavigne, Jr., William T. McKee, Gavin T. Molinelli, Robert G. Savage,  
 3 Peter D. Staple, James L. Tyree, Samuel R. Saks, M.D., James A. Schoeneck, David B. Zenoff,  
 4 Srinivas G. Rao, M.D., PH.D. and R. Scott Shively, and nominal defendant Assertio Therapeutics,  
 5 Inc., f/k/a Depomed, Inc. (“Assertio”) hereby stipulate and agree as follows:

6 WHEREAS, the above-captioned shareholder derivative action (the “Action”), brought on  
 7 behalf and for the benefit of Assertio, was commenced on November 15, 2017 (ECF No. 1);

8 WHEREAS, other related shareholder derivative actions were brought on behalf of Assertio,  
 9 including (i) a consolidated shareholder derivative action styled as *In re Depomed, Inc. Derivative*  
 10 *Litigation*, Master File No.: RG17877280, pending in the Superior Court of the State of California  
 11 for the County of Alameda (the “State Court Action”) and (ii) a shareholder derivative action styled  
 12 as *Lutz v. Higgins, et al.*, Case No. 1:18-cv-02044-CFC, pending in the United States District Court  
 13 for the District of Delaware (the “Lutz Action”);

14 WHEREAS, on July 30, 2021, the parties to this Action, the State Court Action and the *Lutz*  
 15 Action executed a Stipulation of Settlement and Release Agreement (the “Settlement Stipulation”)  
 16 providing, among other things, for the release of certain claims, including all those asserted against  
 17 the defendants in this Action, and the parties’ stipulation to the dismissal of this Action, with prejudice,  
 18 following the date on which the Settlement Stipulation shall have become final and effective;

19 WHEREAS, on August 6, 2021, plaintiffs in the State Court Action filed an Unopposed Motion  
 20 for Preliminary Approval of Derivative Settlement (the “Derivative Settlement”);

21 WHEREAS, on October 28, 2021, Judge Brad Seligman entered an order preliminarily  
 22 approving the Derivative Settlement and ordering that notice of the Derivative Settlement be provided  
 23 to Assertio stockholders;

24 WHEREAS, notice of the Derivative Settlement was provided to Assertio stockholders in  
 25 accordance with the preliminary approval order;

26 WHEREAS, on December 14, 2021, following a settlement fairness hearing, Judge Seligman  
 27 entered an Order and Final Judgment (the “Judgment,” attached hereto as Exhibit A), granting final  
 28

1 approval of the Derivative Settlement and finding that the Derivative Settlement was fair,  
2 reasonable, and adequate;

3 WHEREAS, pursuant to the terms of the Settlement Stipulation, Plaintiff shall dismiss this  
4 Action with prejudice.

5 THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE, through their  
6 undersigned counsel, subject to the approval of the Court, as follows:

7 1. The Action is dismissed with prejudice; and

8 2. The parties agree that except as otherwise set forth in the Settlement Stipulation and/or  
9 ordered by the court in the State Court Action, each side shall bear his, her, or its own fees, costs,  
10 and expenses.

11 **IT IS SO STIPULATED.**

12 Dated: December 20, 2021

/s/ Benjamin Heikali

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*Counsel for Plaintiff*

19 Dated: December 20, 2021

/s/ Michael A. Mugmon

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*Counsel for Nominal Defendant and Individual Defendants*

~~PROPOSED~~ ORDER


Based upon the above stipulation of the parties and for good cause appearing:

The Action is dismissed with prejudice.

The parties shall bear his, her, or its own fees, costs, and expenses except as otherwise set forth in the Settlement Stipulation and/or ordered by the court in the State Court Action.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: April 14, 2022

  
\_\_\_\_\_  
The Honorable Jon S. Tigar  
United States District Judge